S.B. CIVIL WRIT PETITION NO.1410/2005

Jeevan Ram Vs. Gokul Chand & anr.

Date : 6.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.Bohra for Mr.V.Purohit, for the petitioner.
Mr. R.S.Choudhary, for respondent no.1.

- - - - -

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 17.1.2005 by which the trial court rejected the petitioner's application filed under Order 7 Rule 11 C.P.C.

According to learned counsel for the petitioner, the suit filed by the plaintiff before the trial court is under Section 106 of the Transfer of Property Act (for short 'the TP Act) and in view of the clear language used in Section 106 which provides that if there is no written contract, the suit for eviction can be filed against the tenant but in this case, admittedly there is a written contract between the plaintiff and defendant for tenancy, therefore, the suit is not maintainable and hence, the suit of the plaintiff be dismissed as barred by law under Order 7 Rule 11 C.P.C.

The plaintiff's contention is based on wrong reading of

Section 106 of the TP Act. Section 106 provides about duration of tenancy and also provides that where there is no written contract, the tenancy of particular type shall be annual etc. Section 106 also provides the procedure for termination of tenancy. Section 106 nowhere provides that a suit for eviction can be filed only when there is no written contract.

In view of the above discussion, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya